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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )  
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BellSouth Petition for Forbearance )  
from Application of Section 272 of the )  
Communications Act of 1934, as Amended, )  
to Previously Authorized Services )

CC Docket No. 96-149

**BELLSOUTH REPLY**

BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc. (collectively "BellSouth"), hereby replies to comments and opposition filed in response to BellSouth's petition to the Commission, pursuant to Section 10 of the Communications Act of 1934, as amended, to forbear from applying the requirements of Section 272 of the Act to BellSouth's "reverse directory" and E911 services.

**INTRODUCTION**

Only three parties oppose BellSouth's petition.<sup>1</sup> Sprint argues that BellSouth's on-line reverse directory service was not "previously authorized." MCI argues that dominant carriers are never entitled to forbearance and urges the Commission to deny BellSouth's petition with respect to both E911 and reverse directory services. AT&T, after opposing BellSouth's petition, acknowledges that the Commission might find it in the public interest to allow BellSouth to continue to provide E911 and reverse directory services, but in this event, urges the Commission

<sup>1</sup> Supporting comments were also filed by Bell Atlantic and by Ameritech.

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to apply Section 272's nondiscrimination and accounting requirements to these services. The Commission should reject all of these arguments.

**I. BELLSOUTH'S ON-LINE REVERSE DIRECTORY SERVICE IS A  
"PREVIOUSLY AUTHORIZED" ACTIVITY UNDER THE 1996 ACT**

As BellSouth explained in its petition, it is the grant of the previous authorization, not the date of engaging in the authorized activity, that is the relevant factor in determining whether a BOC may "engag[e], *at any time after the date of enactment of the Telecommunications Act of 1996*, in any activity to the extent [previously] authorized" by the MFJ court.<sup>2</sup> Contrary to Sprint's assertions,<sup>3</sup> BellSouth's on-line reverse directory service activity is merely a form of reverse directory service that has in fact been "previously authorized" under the MFJ. Indeed, the MFJ court's order that granted Ameritech relief to offer a reverse directory service -- and which provided the basis of BellSouth's "me too" relief -- broadly addressed "what has been called a 'reverse' directory service, that is, a service in which the company provides a customer's name, his address, or both, upon the input of a telephone number."<sup>4</sup> There was no limitation of the relief granted to manual, operator assisted reverse directory service.<sup>5</sup> Accordingly, BellSouth's on-line

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<sup>2</sup> BellSouth Petition at 5; 47 U.S.C. § 271(f) (emphasis added).

<sup>3</sup> MCI and AT&T do not contend that BellSouth's on-line reverse directory service has not been previously authorized.

<sup>4</sup> See, BellSouth Petition, at Attachment 2, p. 1. See also, *id.*, at p. 1-3 (MFJ court's summary of parties' characterizations of the service, including MCI's "broad[]" statement that "the purpose of the service is to sell information on a per query basis" and that the service "offers a searching capability, allowing customers 'to configure their own information requests and retrieve name and address information in any order desired.'").

<sup>5</sup> In any event, the information services restriction of the MFJ, which might have supported a narrow construction of the relief granted, was subsequently lifted, *United States v. Western Electric*, 767 F. Supp. 308 (1991), *aff'd*, 993 F.2d 1572 (1993), rendering moot any distinction between operator assisted and automated reverse directory services.

reverse directory service was fully authorized under the MFJ and is appropriate for consideration for forbearance from application of Section 272 separation requirements.

Moreover, for as long as the service has been offered it has been offered in a manner consistent with BellSouth's MFJ obligations. Although the home numbering plan area (NPA) option of BellSouth's on-line reverse search offering includes an interLATA transmission component, this service option has always been limited to the names and telephone numbers of customers in the same local calling area (NPA) as the subscriber to the service. This service limitation is also consistent with BellSouth's basic electronic white pages offering.

Sprint's additional suggestion that BellSouth must first obtain Section 271 authority to provide its on-line reverse directory service is both wrong and misdirected.<sup>6</sup> Section 271(b)(3) provides that a Bell operating company or any affiliate of that company may provide incidental interLATA services originating in any State after the date of enactment of the 1996 Act without first obtaining Commission approval of an application to provide interLATA services under Section 271(d). The 1996 Act's definition of "incidental interLATA services" specifically includes "a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA."<sup>7</sup> Thus, even if BellSouth's on-line reverse directory service were not "previously authorized," BellSouth would not need Section 271(d) relief to continuing offering it. Nevertheless, while such incidental interLATA services do not appear to be exempted from Section 272's separate affiliate requirements, the Commission has recognized that where

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<sup>6</sup> Sprint Comments at 4; AT&T Comments at n.6.

<sup>7</sup> 47 U.S.C. § 271(g)(4).

such services are previously authorized, as BellSouth's services are, those services are appropriate for consideration of forbearance from the Section 272 separation requirements.<sup>8</sup>

**II. BELLSOUTH'S CONTINUING PROVISION OF E911 AND REVERSE DIRECTORY SERVICES SUBJECT TO NON-STRUCTURAL SAFEGUARDS AGAINST DISCRIMINATION MEETS THE 1996 ACT'S FORBEARANCE REQUIREMENTS.**

MCI argues that the Commission should not forbear from imposing Section 272 separate subsidiary safeguards on BellSouth's E911 and reverse directory services on the grounds that (1) regulatory forbearance can never, as a fundamental principle, be appropriate for dominant carriers; and (2) that BellSouth has not provided MCI with the subscriber listings of other telecommunications carriers in the absence of the other telecommunications carrier's consent.<sup>9</sup>

AT&T argues that previous Commission authorization of BellSouth's provision of these services on an integrated basis does not justify Section 10 forbearance of Section 272's separate affiliate requirements.<sup>10</sup> The Commission should reject both arguments.

MCI's argument that the Commission is permanently enjoined from forbearing to regulate dominant carriers is based on a tautological reading of the 1996 Act:

Forbearance from the application of any nondiscrimination provision to a dominant carrier would never be appropriate, since a prerequisite for forbearance is that

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<sup>8</sup> *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, FCC 96-489 (released Dec. 24, 1996), 62 Fed. Reg. 2927 (1997) ("Non-Accounting Safeguards Order") at ¶ 81 (intimating willingness to consider petitions for forbearance from application of Section 272 separate affiliate requirements for previously authorized interLATA information services).

<sup>9</sup> MCI Opposition, *passim*.

<sup>10</sup> AT&T Comments, *passim*.

enforcement of the provision sought to be forborne is not necessary to prevent discrimination.<sup>11</sup>

In the first place, forbearance from Section 272's separate affiliate requirements and, as a consequence, from the attendant structural and transaction requirements, does not relieve BellSouth of any statutory or regulatory nondiscrimination requirement that may be applicable to BellSouth as a dominant carrier. Forbearance will simply allow E911 and reverse directory services to continue to be offered by BellSouth in the most economical and efficient manner, on an integrated basis, and subject to less oppressive nondiscrimination requirements.

Second, contrary to MCI's characterization of the law, the Commission has correctly determined that:

Section 10 of the Communications Act *requires* us to forbear from applying any provision of the Act that is not necessary to ensure just and reasonable charges and practices in the telecommunications marketplace, or to protect consumers, if we find that such forbearance is in the public interest.<sup>12</sup>

Both the MFJ Court and this Commission have previously determined the integrated provision of E911 service and BellSouth's reverse directory services to be in the public interest, and neither AT&T nor MCI has refuted BellSouth's demonstration, in its petition, that Section 10

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<sup>11</sup> MCI Opposition at ii, 4-5. That MCI's argument is not only illogical, but unreasonable and contrary to the public interest, cannot be doubted. Not only would MCI have BellSouth tear down its E911 service, but MCI declares that BellSouth's operation of its reverse directory services under existing authority "violates so many provisions of the Communications Act that BellSouth would need forbearance from all of Title 47 of the United States Code to be able to continue lawfully." *Id.* at 5. Of course, to the extent such broad forbearance is necessary for BellSouth to be able to continue offering its services in a manner authorized and determined to be in the public interest by this Commission, BellSouth supports such forbearance.

<sup>12</sup> *Non-Accounting Safeguards Order*, at ¶ 81 (emphasis added).

forbearance of Section 272's separate affiliation requirements from these services is in the public interest.<sup>13</sup>

The Commission must forbear from requiring BellSouth to provide its E911 and reverse directory services through a section 272 affiliate to the extent a BOC demonstrates that forbearance fully satisfies Section 10's three part test.<sup>14</sup> In order to meet the first part of the test, the Commission must be in a position to determine that enforcement of "any regulation or any provision" of the Act is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with the service from which forbearance of a particular regulatory requirement is sought are "just and reasonable and are not unjustly or unreasonably discriminatory."<sup>15</sup> No commenter advances any facts to suggest that application of Section 272 separate affiliate requirements is necessary to ensure that BellSouth's continued provision of E911 service on an integrated basis is not "just and reasonable" or is in any way "unjustly or unreasonably discriminatory."<sup>16</sup>

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<sup>13</sup> Neither AT&T nor Sprint appears to oppose BellSouth's petition for forbearance with respect to E911 service. To the extent the Commission treats these carriers' comments as oppositions to BellSouth's petition with respect to E911 service, BellSouth's arguments, though addressed to MCI, apply equally to AT&T and Sprint.

<sup>14</sup> 47 U.S.C. § 160; *Non-Accounting Safeguards Order* at ¶ 81.

<sup>15</sup> 47 U.S.C. § 160(a), (a)(1).

<sup>16</sup> Neither does any commenter present facts that would tend to show that BellSouth's continuing provision of previously authorized E911 service on an integrated basis would fail the other two parts of the Section 10 test: (1) separate affiliation and attendant structural and transactional requirements are not alleged by any party to be necessary for the protection of consumers; and (2) tearing down E911 service as currently provisioned, and reprovisioning E911 service in accordance with Section 272, is not alleged by any party to be consistent with the public interest. Indeed, given the Commission's previous determinations concerning the high public interest in protecting and preserving national 911 emergency information services, it would not be overstatement to suggest that any change in the service as currently provisioned, especially in light of the lack of any allegation with respect to the first two parts of the Section 10 test, would be (Continued...)

The only commenter who purports to provide a factual basis for the Commission with respect to its Section 10 determination is MCI, who complains that BellSouth's unwillingness to provide the subscriber lists of third party telecommunications carriers without the consent of those carriers constitutes unreasonable discrimination under Section 202(b) of the Act and otherwise violates prohibitions against discriminatory conduct contained in Section 251 of the Act. In fact, it is the existence of both of these sections, and the remedies available to MCI under these sections, that render the application of Section 272's separate affiliate requirements superfluous and, therefore, "not necessary to ensure that the charges, practices, classifications, or regulations by, for, or interconnection with" BellSouth's reverse directory services are "just and reasonable and are not unjustly or unreasonably discriminatory."<sup>17</sup>

The Commission has already declared that disputes regarding nondiscriminatory access to directory assistance and to directory listings will be addressed under its Title II and Title V enforcement authority.<sup>18</sup> To the extent MCI believes it has developed facts which would support a claim of violation of Section 202(b) of the Act, it has a remedy available in both the United States District Court and before the Commission.<sup>19</sup> To the extent that MCI is complaining about

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contrary to the public interest. See, *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 92-105 (rel. February 19, 1997) at ¶ 23; see also, Bell Atlantic Comments, *passim*.

<sup>17</sup> 47 U.S.C. § 160(a)(1).

<sup>18</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98 (rel. August 8, 1996) (*Second Interconnection Order*) at ¶145.

<sup>19</sup> 47 U.S.C. § 208. The notice and comment cycle recently closed on the Commission's most recent effort to streamline its formal complaint process. *Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Notice of Proposed Rulemaking, CC Docket No. 96-238 (rel. November 27, 1996).

conduct allegedly violating the interconnection requirements of Section 251, it has certainly had its opportunity to negotiate in good faith with BellSouth for the provision of third party carrier subscriber lists in the context of an interconnection agreement, to arbitrate any disputed provision before the state commissions, and to seek redress, if appropriate, in the United States District Court. MCI's effort to hold BellSouth's existing E911 and reverse directory services hostage is a transparent attempt to redress its dissatisfaction with outcomes of other proceedings. If MCI truly has a legitimate complaint with BellSouth's conduct with regard to its ability to provide subscriber lists relating to BellSouth's directory assistance<sup>20</sup> and reverse directory services, MCI should be required to prove its entitlement to relief in court or before the Commission.

MCI is wrong to characterize BellSouth's conduct as illegal. The Commission's orders clearly recognize that the term "directory listing" as used in section 251(b)(3) is synonymous with the definition of "subscriber list information" used in section 222(f)(3).<sup>21</sup> Section 222 of the Act mandates that every telecommunications carrier "has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers."<sup>22</sup> The Commission has determined that the LEC that owns the database can take the necessary safeguards to protect any proprietary information.<sup>23</sup> In those limited circumstances where BellSouth is precluded from disclosing the proprietary information of third party carriers, it is

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<sup>20</sup> The conditions of BellSouth's provision of its basic directory assistance services listings are legally irrelevant to the Commission's consideration of BellSouth's petition for forbearance as it relates to certain specified information services.

<sup>21</sup> *Second Interconnection Order* at ¶ 137.

<sup>22</sup> 47 U.S.C. § 222(a).

<sup>23</sup> *Second Interconnection Order* at ¶ 144.

perfectly justified in doing so by the terms of any contract between BellSouth and such carriers as well as the foregoing statutory and regulatory authority.

In any event, at issue in BellSouth's petition is not BellSouth's basic directory assistance service, or issues of access to those services, but rather, forbearance of Section 272's separate affiliate requirements from BellSouth's E911 and reverse directory services, including BellSouth's on-line reverse directory service. Because the Commission has determined BellSouth's on-line service to be "enhanced" under the Commission's rules, it is not a network element subject to Section 251's unbundling requirement, and is conceptually separate and distinct from BellSouth's directory assistance service.

Finally, no commenter offers any facts to demonstrate either that BellSouth's provision of previously authorized reverse directory services through a separate Section 272 affiliate is necessary for the protection of consumers or that forbearance of this requirement is inconsistent with the public interest. Indeed, this would be difficult since the Commission has only recently determined that BellSouth's offering of the service on an integrated basis subject to appropriate safeguards is in the public interest.<sup>24</sup> Moreover, BellSouth's on-line reverse search service offers tangible public health and safety benefits.<sup>25</sup> As with E911, if BellSouth were to be forced either to construct multiple LATA based databases or to refrain from offering the service unless it

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<sup>24</sup> *BellSouth Petition for Waiver of Computer III Rules for Reverse Search Capability*, CC Docket No. 90-623, Memorandum Opinion and Order on Reconsideration, DA 96-1069 (Jul. 3, 1996).

<sup>25</sup> Letter from Carolyn G. Morris, Assistant Director, Information Resources Division, U.S. Department of Justice, Federal Bureau of Investigation, to Ben G. Almond, Executive Director, Federal Regulatory, BellSouth, February 26, 1996 at p. 1.

instituted the full scope of Section 272's requirements, the service could not be economically offered. Neither consumers nor the public interest would be served by such a result.

### CONCLUSION

For the reasons set forth herein and in its petition, BellSouth respectfully asks the Commission to forbear from applying the Section 272 separate affiliate requirements to BellSouth's previously authorized reverse directory and E911 services.

Respectfully submitted,

BELLSOUTH CORPORATION

Its Attorneys



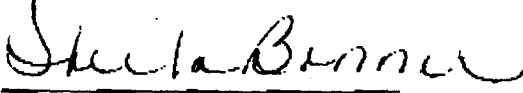
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**CERTIFICATE OF SERVICE**  
**(CC DKT. 96-149)**

I hereby certify that I have this 17th day of March, 1997 served the following parties to this action with a copy of the foregoing BELLSOUTH REPLY by placing a true and correct copy of the same in the United States mail, postage prepaid, addressed to the parties on the attached service list.

  
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